

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 13, 2001

GSBCA 15349-RELO

In the Matter of FRANK HICKEY

Frank Hickey, Yonkers, NY, Claimant.

Pamela A. Regensburger, Chief, Travel Branch, Defense Finance and Accounting Service, St. Louis, MO, appearing for the Department of the Army.

WILLIAMS, Board Judge.

On or about April 13, 2000, claimant submitted a voucher to the Defense Finance and Accounting Service in conjunction with his transfer from Seoul, Korea, to the Redstone Arsenal in Huntsville, Alabama, in January 1986. The agency denied payment because the voucher was not transmitted within the six years permitted by the relevant statute of limitations. Because the six-year filing requirement is statutory, it cannot be waived and claimant's claim is time barred.

Background

On November 8, 1985, the Army authorized claimant a permanent change of station (PCS) from Seoul, Korea, to Huntsville, Alabama. He was authorized shipment of a privately owned vehicle and household goods, and temporary quarters subsistence expenses, and his family was authorized travel from Stamford, Connecticut, to Huntsville, Alabama. Claimant and his family moved to Alabama in early 1986.

On September 15, 1986, the apartment in which claimant and his family lived was destroyed by fire. All the paperwork supporting his voucher was in that apartment.

According to a medical record dated November 13, 1995, claimant has been ill since 1991 and he suffered traumatic head injuries in 1992 and 1993. As a result of his illness, claimant took early retirement in 1991 and still remains hospitalized in a Department of Veterans Affairs facility.

According to his official personnel file, claimant did not submit a travel voucher for expenses incurred in his 1986 transfer until March 16, 2000. There is no indication in the record before us that he ever attempted to file an earlier claim.

By letter dated October 29, 1999, Delta Air Lines advised claimant that the round-trip airfare from New York to Huntsville was \$282 in January 1986. By letter dated September 29, 1999, the Kings Inn in Huntsville, Alabama, advised claimant that the price of a double room in 1986 was \$37.30 per night, and that two double rooms would have cost \$74.60 per night. Claimant used this information to reconstruct his travel voucher.

Claimant recognizes that there is a six-year statute of limitations for reimbursement of his claim. In his letter of June 19, 2000, claimant explained that he was not able to reconstruct and file the necessary paperwork due to his illness. He, therefore, has requested that his case be presented to Congress for special legislation.

Claimant seeks reimbursement for lodging and meals and miscellaneous expenses for himself and his three family members from January 7, 1986, through March 4, 1986, for a total of \$8540.40.

Discussion

Claimant's claim is time barred. Because the six-year limitation period is statutory, 31 U.S.C. § 3702(b) (1994), and claimant has failed to demonstrate that his claim was submitted within that statutory time frame, this Board cannot direct the agency to pay claimant's voucher. Janice P. Collington, GSBICA 14078-RELO, 97-2 BCA ¶ 29,025.

Furthermore, this is not a case where equitable tolling of the limitations period would be appropriate. See Frank H. Khattat, GSBICA 13711-TRAV, 97-2 BCA ¶ 29,069 (Board refused to toll six-year statute of limitations where claimant was ill but had adequate time to prepare his claim before he was forced to retire). Equitable tolling is generally reserved for the claimant who, without fault, allows the limitations period to run. Irwin v. Department of Veterans Affairs, 498 U.S. 89, 96 (1990) ("We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights."); Kelley v. NLRB, 79 F.3d 1238, 1248 (1st Cir. 1996) (Equitable tolling is "appropriate only when the circumstances that cause a plaintiff to miss a filing deadline are out of his [or her] hands.") (citations omitted). Mr. Hickey is not such a claimant. Mr. Hickey had nine months before the fire occurred to submit his voucher and almost five years after the fire to recreate the voucher before he became ill in 1991. While the Board recognizes that Mr. Hickey developed considerable health problems at some time after his PCS, there was adequate opportunity for him to submit his voucher before he became so disabled that he was forced to retire.

The agency has also requested that, if the Board cannot provide relief under an existing statute or regulation, the Board send the matter to the Administrator of General Services for possible referral to Congress under the Meritorious Claims Act, 31 U.S.C.

§ 3702(d) (Supp. V 1999). In accordance with this request, we will forward Mr. Hickey's claim to the appropriate office within the General Services Administration.

MARY ELLEN COSTER WILLIAMS
Board Judge